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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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C2 EDUCATIONAL SYSTEMS, INC.,
Plaintiff,
v.
SUNNY LEE, et al.,
Defendants.

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Case No. [18-cv-02920-SI](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 76

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Defendants' motion for summary judgment came on for hearing on July 12, 2019. Having carefully considered the papers filed and the arguments made, the Court hereby rules as follows.

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BACKGROUND

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On May 17, 2018, plaintiff C2 Educational Systems, Inc. ("C2") filed this action based on diversity jurisdiction against defendants Sunny Lee, Kyung Hye Debbie Hong, and So Yeon Jang. Dkt. No. 1. Plaintiff is a company that provides academic tutoring, standardized test preparation, and college admissions counseling at over 180 centers nationwide. Pl.'s Ex. 11, Lobo Decl. ¶ 6. By this lawsuit, plaintiff alleges that defendants, who are former employees of plaintiff, began developing a competing business (called Core Academics, LLC) while they were still employed by plaintiff. Because the parties dispute many of the facts at issue in this case, the Court recites the relevant facts in further detail in the Discussion section below.

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On April 19, 2019, with the Court's leave, plaintiff filed its first amended complaint. Dkt. Nos. 65, 66. In it, plaintiff adds Core Academics, LLC ("Core") as a defendant and brings the following claims for relief: (1) breach of duty of loyalty; (2) violation of the California Computer Data and Access Fraud Act; (3) misappropriation and conversion of property; and (4) tortious

1 interference with customer contracts. A jury trial in this case is set to begin on October 7, 2019.

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3 **LEGAL STANDARD**

4 Summary judgment is proper if the pleadings, the discovery and disclosure materials on file,
5 and any affidavits show that there is no genuine dispute as to any material fact and that the movant
6 is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The moving party bears the
7 initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v.*
8 *Catrett*, 477 U.S. 317, 323 (1986). The moving party, however, has no burden to produce evidence
9 showing the absence of a genuine issue of material fact. *Id.* at 325. Rather, the burden on the
10 moving party may be discharged by pointing out to the district court that there is an absence of
11 evidence to support the non-moving party's case. *Id.*

12 Once the moving party has met its burden, the burden shifts to the non-moving party to
13 "designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting then
14 Fed. R. Civ. P. 56(e)). To carry this burden, the non-moving party must "do more than simply show
15 that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v.*
16 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "The mere existence of a scintilla of evidence . . .
17 will be insufficient; there must be evidence on which the jury could reasonably find for the [non-
18 moving party]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

19 In deciding a summary judgment motion, the evidence of the non-movant is to be believed,
20 and all justifiable inferences are to be drawn in his favor. *Id.* at 255. "Credibility determinations,
21 the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury
22 functions, not those of a judge . . . ruling on a motion for summary judgment . . ." *Id.* However,
23 conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine
24 issues of fact and defeat summary judgment. *Thornhill Publ'g Co., Inc. v. Gen. Tel. & Elec. Corp.*,
25 594 F.2d 730, 738 (9th Cir. 1979). The evidence the parties present must be admissible. Fed. R.
26 Civ. P. 56(c)(4).

27 The parties agree that in this action based on diversity jurisdiction, the substantive law of the
28 state of California applies. *See Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

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DISCUSSION

2 Defendants move for summary judgment on all four of plaintiff's claims. If the claims
3 survive summary judgment, defendants ask that the Court "grant summary adjudication as to
4 punitive damages because Plaintiff has no evidence that the Defendants acted willfully or
5 maliciously." Mot. at 1.

6 Both parties agree there are numerous facts in dispute. At the hearing, defendants asserted
7 that those facts are not material, but they forwarded no argument showing this to be the case, whether
8 at the hearing or in their papers. Plaintiff has argued in response that the disputed facts *are* material
9 to resolution of its claims. Because the Court agrees with plaintiff, the Court will DENY the
10 majority of defendants' motion for summary judgment, with the exception of GRANTING summary
11 judgment on the claim for breach of the duty of loyalty as to defendant Core Academics LLC only.

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I. Breach of Duty of Loyalty

13 "The elements of a cause of action for breach of a duty of loyalty . . . are as follows: (1) the
14 existence of a relationship giving rise to a duty of loyalty; (2) one or more breaches of that duty; and
15 (3) damage proximately caused by that breach." *Huong Que, Inc. v. Luu*, 150 Cal. App. 4th 400,
16 410 (2007) (citation omitted). California courts have held that "[a]n employee does not breach his
17 duty of loyalty by *preparing* to compete with his employer." *Mamou v. Trendwest Resorts, Inc.*,
18 165 Cal. App. 4th 686, 719 (2008) (citations omitted). Nevertheless, "while an employee may
19 secretly incorporate a competing business prior to departing, the employee may not use his or her
20 principal's time, facilities or proprietary secrets to build the competing business[.]" *Id.* (quoting
21 *Chemfab Corp. v. Integrated Linear Techs. Inc.*, 693 N.Y.S. 2d 752, 754 (1999)).

22 The main thrust of the parties' dispute here is whether defendants began competing with
23 plaintiff while still employed by plaintiff, which would constitute a breach of their duty of loyalty,
24 or whether defendants merely began lawful preparations to compete.

25 On the present record, the Court finds that disputes of fact remain as to whether defendants
26 breached their duty of loyalty to C2. For instance, plaintiff has pointed to deposition testimony from
27 several C2 teachers stating that defendants recruited them to teach for Core while defendants were
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1 still employed at C2. It is undisputed that defendants Jang, Hong, and Lee left their employment at
2 C2 on February 3, February 9 or 14,¹ and February 14, 2018, respectively. *See* Pl.’s Ex. 7, Jang
3 Dep. at 21:20-22:7; Defs.’ Ex. J, Hong Dep. at 42:17-43:3; Pl.’s Ex. 8, Lee Dep. at 53:14-17. And
4 yet Mark Cha, a teacher for C2, testified that he received an offer letter to teach at Core on January
5 31, 2018. *See* Pl.’s Ex. 3, Cha Dep. at 92:23-93:7. Cha’s offer letter gave him a start date of
6 February 12. *Id.* at 108:1-16. Defendants dispute this, stating in their motion that “Core began
7 hiring staff in late February and March of 2018.” *See* Mot. at 3. For evidence, defendants cite the
8 April 18, 2019 deposition transcript of defendant Jang (defendants’ Exhibit L) at pages 100:13-
9 101:13 but they do not attach page 101 to Exhibit L, and page 100 contains no testimony regarding
10 when defendants began hiring teachers for Core.

11 “The determination of the particular factual circumstances and the application of the ethical
12 standards of fairness and good faith required of a fiduciary in a given situation is for the trier of
13 facts.” *Sequoia Vacuum Sys. v. Stransky*, 229 Cal. App. 2d 281, 288 (1964) (citing *Indus. Indem.*
14 *Co. v. Golden State Co.*, 117 Cal. App. 2d 519, 534 (1953)). Here, a reasonable trier of fact could
15 conclude that defendants went beyond mere preparation for competition by hiring plaintiff’s
16 teachers while defendants were still employed by plaintiff. *See id.* at 287 (an agent “may plan and
17 develop his competitive enterprise during the course of his agency only where the particular activity
18 engaged in is not against the best interests of his principal”); *cf. Hung Que*, 150 Cal. App. 4th at 417
19 (breach of duty of loyalty may exist where an agent diverts the principal’s customers to the agent’s
20 new business “while ostensibly remaining [the principal’s] employees or agents”).

21 Accordingly, the Court DENIES defendants’ motion for summary judgment on the claim for
22 breach of the duty of loyalty.²

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25 ¹ Hong testified that the last day she actually worked at C2 was February 9, 2018, but that
26 she was subsequently paid four days of “PTO” (paid time off) at the end of her employment. Pl.’s
Ex. 5, Hong Dep. at 43:1-6.

27 ² Defendants make the additional argument that this claim is preempted by the California
28 Uniform Trade Secrets Act. However, as the above allegation regarding recruitment and hiring of
C2 teachers illustrates, plaintiff has come forth with disputed material facts beyond those involving
trade secrets, and so defendants’ preemption argument is inapplicable.

1 **II. California Computer Data and Access Fraud Act (Cal. Penal Code § 502)**

2 Defendants argue that “Plaintiff makes bold allegations that Defendants misused [their C2]
3 laptops by deleting all C2 emails to which they had access before leaving their employment. . . . At
4 best, when defendant Hong was asked about this issue in her deposition, she testified she deleted
5 some personal emails from her C2 account. She, however[,] denied deleting *all* emails and she
6 remains prepared to testify that what information she did delete had nothing to do with C2’s
7 operations. Lee testified that she deleted her personal C2 emails because they were not needed by
8 C2 to continue operating the Cupertino Center.” Mot. at 13-14.

9 Defendants’ very motion on this claim thus reveals that there is a dispute between the parties
10 as to whether defendants Lee and Hong deleted all of their C2 emails and whether those emails were
11 needed by C2. In its opposition, plaintiff also points to a broader problem with data deletion.
12 Plaintiff states that “Lee and Hong deleted all of the data from not only their C2 email accounts, but
13 also the entirety of their C2 G Suite accounts, which included documents, spreadsheets, slides and
14 other C2 business documents, on their last day of work for C2, February 14, 2018.” Opp’n at 10.³
15 Plaintiff states that it expended “time and resources in attempting to recover the emails and data
16 contained in Lee and Hong’s C2 G Suite accounts” but was unable to do so. Dkt. No. 82-41, Urban
17 Decl. ¶ 15.

18 Defendants make the additional argument that plaintiff’s claim must fail due to the scope of
19 employment exception in the California Computer Data and Access Fraud Act (“CDAFA”),
20 California Penal Code Section 502(h). But as plaintiff notes, “[o]rdinarily, the determination
21 whether an employee has acted within the scope of employment presents a question of fact; it
22 becomes a question of law . . . when ‘the facts are undisputed and no conflicting inferences are
23 possible.’” *See Mary M. v. City of Los Angeles*, 54 Cal. 3d 202, 213 (1991) (quoting *Perez v. Van*
24 *Groningen & Sons, Inc.*, 41 Cal. 3d 962, 968 (1986)). Because the relevant facts here are not
25 undisputed, the Court declines defendants’ request to determine as a matter of law that defendants
26 were acting within the scope of their employment when they deleted their C2 emails and/or C2 G

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28 ³ Plaintiff’s brief cites to the declaration of Andrew Lobo, but at the hearing plaintiff clarified
 that it is actually the declaration of Michael Urban that contains this information.

1 Suite accounts.

2 Defendants also state that plaintiff has no claim under the CDAFA because it cannot prove
3 damages, citing *Mintz v. Mark Barelstein & Assoc. Inc.*, 906 F. Supp. 2d 1017 (C.D. Cal. 2012).⁴
4 Yet that case does not support defendants' position. In explaining that the plaintiff had "experienced
5 sufficient damage to support a private right of action" under the CDAFA, the *Mintz* court quoted
6 from a decision by Judge Ware of this district: "Section 502 sets no threshold level of damage or
7 loss that must be reached to impart standing to bring suit. Under the plain language of the statute,
8 any amount of damage or loss may be sufficient." *Id.* at 1032 (quoting *Facebook, Inc. v. Power
Ventures, Inc.*, No. C 08-05780-JW, 2010 WL 3291750, at *4 (N.D. Cal. July 20, 2010)).
9 Accordingly, the plaintiff had proven damages where it was undisputed that he "spent some time
10 restoring his Gmail password and investigating who had hacked the Gmail account." *Id.*; *see also*
11 *Power Ventures*, 2010 WL 3291750, at *4 (rejecting the defendants' argument that "a few clicks of
12 a mouse . . . and ten keystrokes" would not constitute sufficient damages for standing under the
13 CDAFA).

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15 Here, it is far from undisputed that plaintiff suffered no damage from defendants' actions in
16 allegedly deleting emails and the contents of their C2 G Suite accounts. Plaintiff has come forward
17 with disputed facts that, if believed, would support a jury's finding that plaintiff suffered damage
18 within the meaning of the CDAFA. *See, e.g.*, Urban Decl. ¶¶ 14-15.

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20 **III. Misappropriation and Conversion of Property**

21 In California, conversion is defined as "the wrongful exercise of dominion over the property
22 of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to
23 possession of the property; (2) the defendant's conversion by a wrongful act or disposition of

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26 ⁴ The statute states that "the owner or lessee of the computer, computer system, computer
27 network, computer program, or data who suffers damage or loss by reason of a violation of any of
28 the provisions of subdivision (c) may bring a civil action against the violator for compensatory
damages . . ." Cal. Penal Code § 502(e)(1). "Compensatory damages" is defined to "include any
expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer
system, computer network, computer program, or data was or was not altered, damaged, or deleted
by the access." *Id.*

1 property rights; and (3) damages[.]” *Lee v. Hanley*, 61 Cal. 4th 1225, 1240 (2015) (citation omitted).

2 Defendants assert that plaintiff has no claim for conversion, focusing on the allegation that
3 defendants Lee and Jang failed to return C2 company laptops when their employment ended. In its
4 opposition, plaintiff identifies a number of other items besides the laptops that it claims defendants
5 unlawfully converted. This includes the allegation that defendants “delet[ed] data files from the
6 computers C2 permitted them to use during their employment with C2 without C2’s
7 authorization[.]” *See Opp’n* at 20. Plaintiff has provided a declaration from its Vice President of
8 Information Technology and Development Services that “Lee and Hong deleted . . . the entirety of
9 their C2 G Suite accounts, which included documents, spreadsheets, slides and other C2 business
10 documents, on their last day of work for C2, February 14, 2018.” *Urban Decl.* ¶ 12. While
11 defendants argue in their motion that plaintiff could still access the “Smart2 database” even without
12 the laptops of Lee and Jang, *see Mot.* at 19, the G Suite account is distinct from the Smart2 database.
13 The former is an account in which the user could store word files, spreadsheets, PowerPoints, etc.,
14 while the latter is a database for entering client leads. *See Pl.’s Ex. 8, Lee Dep.* at 73:11-74:12,
15 83:19-84:3. Plaintiff’s conversion claim thus involves more than the laptops and Smart2 database,
16 and defendants have failed to point to an absence of evidence supporting this claim.

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18 **IV. Tortious Interference with Customer Contracts**

19 In California, the elements of the tort of intentional interference with contractual relations
20 are: “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this
21 contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual
22 relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting
23 damage.” *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990) (citations
24 omitted). As to this claim, the Court again finds that defendants have not shown they are entitled to
25 summary judgment because triable issues of fact remain.

26 For instance, defendant Hong testified that “J.C.”⁵ was the first customer to enroll at Core,

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28 ⁵ Because the client is a minor, the Court refers to him by initials only.

1 and that she enrolled him there on February 10, 2018. Pl.’s Ex. 5, Hong Dep. at 126:4-13. When
2 asked how his family found out about Core, Hong testified, “I think they walked in.” *Id.* at 132:3-
3 5. At defendant Lee’s deposition, Lee agreed that they were the first customers to enroll at Core.
4 Pl.’s Ex. 8, Lee Dep. at 156:1-12. Lee further testified that she “knew of” J.C. prior to his enrollment
5 at Core because “he was at C2. They were very picky clients, and they were very reluctant to enroll.
6 So, I don’t offer a money back guarantee, but I offered money back guarantee.”⁶ *Id.* at 156:17-24.
7 She testified that J.C. and his family were students at the C2 Cupertino Center, where she was the
8 Center Director, and that she had enrolled them there. *Id.* at 29:20-30:2, 157:3-8. Lee also testified
9 that she does not recall saying anything to them about Core. *Id.* at 157:9-15. Plaintiff points to
10 Lee’s testimony in support of its argument that a reasonable jury could find that J.C.’s family learned
11 about Core from Lee, and the Court finds that the evidence is disputed on this point.

12 Additionally, plaintiff has come forward with a declaration from Pam Dhillon, currently a
13 Regional Vice President of C2 who was serving as Regional Director at the time defendants
14 resigned. *See* Dkt. No. 82-42, Dhillon Decl. ¶ 4. Dhillon declares that C2’s Refund Policies, which
15 students sign when they enroll, limits refunds to a maximum of 70% except in very limited
16 circumstances. *Id.* ¶¶ 6-7. She states that after defendant Lee “had left her employment with C2,
17 C2 learned that Lee had approved numerous refund requests that requested refunds of 100% of the
18 tuition paid, and left those approved requests at the Cupertino Center.” *Id.* ¶ 8. She explains that
19 Lee, as Cupertino Center director, was “solely responsible for new enrollments and renewals” and
20 that “[t]he refund dollars issued for students at C2’s Cupertino center in March 2018 [i.e., the month
21 after Lee resigned] were larger than any other month in 2017 or 2018 by a factor of two (2).” *Id.*
22 ¶¶ 16, 20, 22.

23 This evidence is sufficient to show that triable issues of material fact remain on the claim
24 for interference with contractual relations.

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⁶ It is unclear from the transcript whether Lee is referring to the client’s enrollment at C2 or at Core.

1 **V. Core Academics as a Defendant**

2 Defendants further argue, without citation to case law, that Core is not an appropriate
3 defendant on any of the claims. *See* Mot. at 17. The Court agrees with defendants only as to the
4 claim for breach of duty of loyalty. That claim requires proof of the existence of an agent-principal
5 or similar relationship. *See Huong Que*, 150 Cal. App. 4th at 410 (“The duty of loyalty arises not
6 from a contract but from a relationship”). “Agency is ‘the fiduciary relationship that arises
7 when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall
8 act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or
9 otherwise consents to so act.’” *Id.* at 410-11 (quoting Rest. 3d, Agency, § 1.01). Under no
10 construction of the facts could Core, formed as a competing entity to C2, be considered an agent of
11 C2.

12 As to the remaining claims, however, defendants’ arguments turn on the question of when
13 C2 began operating. For instance, defendants state that there can be no claim for violation of the
14 CDAFA because “during the time of the alleged violations of this act (i.e. when Defendants deleted
15 certain emails from their C2 email accounts), Core was not yet in operation.” *See* Mot. at 17. However,
16 when Core began operating is very much in dispute, as evidenced, for instance, by defendants’ assertion
17 that it did not begin hiring teachers until late February and March 2018, while plaintiff asserts that defendants offered to hire a C2 teacher away from C2 in January 2018.

18 Accordingly, the Court GRANTS defendants’ motion for summary judgment on the breach
19 of duty of loyalty claim as against defendant Core Academics, LLC *only* and DENIES the motion
20 for summary judgment in Core’s favor on the remaining claims.

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22 **VI. Punitive Damages**

23 California Civil Code Section 3294 allows a jury to award exemplary (punitive) damages
24 “[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear
25 and convincing evidence that the defendant has been guilty of oppression, fraud, or malice”
26 Cal. Civ. Code § 3294(a). Defendants move for summary judgment on plaintiff’s request for
27 punitive damages, arguing that “[t]he undisputed facts in this case make clear that there is no
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1 evidence, let alone clear and convincing evidence, of malice, oppression, or fraud attributable to
2 Defendants.” Mot. at 22. As the above discussion should make clear, the parties hold widely
3 different views of the facts in this case, which is why the Court finds summary judgment is
4 inappropriate. Plaintiff’s allegations are rife with allegations of malice, oppression, and fraud.
5 Whether the jury will believe these allegations is a matter for another day. At this stage, having
6 found that disputes of fact exist that the jury must resolve, the Court declines to dismiss plaintiff’s
7 request for punitive damages.

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CONCLUSION

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IT IS SO ORDERED.

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Dated: July 17, 2019

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SUSAN ILLSTON
United States District Judge